APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT FILED OCTOBER 13, 2010

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 09-15720
Non-Argument Calendar

Agency No. A029-882-501

MOHAMMED SALIM ISMAIL,

Petitioner,

versus

U.S. ATTORNEY GENERAL,

Respondent.

PETITION FOR REVIEW OF A DECISION OF THE BOARD OF IMMIGRATION APPEALS

Before TJOFLAT, CARNES, and WILSON, Circuit Judges.

PER CURIAM:

Mohammed Salim Ismail seeks review of the Board of Immigration Appeals' decision dismissing his appeal of the Immigration Judge's denial of his application for a

waiver of removability under section 237(a)(1)(H) of the Immigration and Nationality Act, 8 U.S.C. § 1227(a)(1)(H).[1] Ismail contends that the BIA should have exercised its discretion to grant him a waiver of removability because the factors in favor of his remaining in the United States outweighed the adverse factors—his fraudulent conduct and the misrepresentations he had made in order to enter and stay in this country. Ismail argues that the IJ and BIA incorrectly applied the balancing test to determine whether he should be granted a waiver.

We review *de novo* issues of subject matter jurisdiction. *Gonzalez-Oropeza v. United States Att'y Gen.*, 321 F.3d 1331, 1332 (11th Cir. 2003). Our jurisdiction to review discretionary decisions made in immigration proceedings is restricted by 8 U.S.C. § 1252(a)(2)(B). *See* INA § 242(a)(2)(B), 8 U.S.C. § 1252(a)(2)(B); *see also Camacho-Salinas v. United States Att'y Gen.*, 460 F.3d 1343, 1347 (11th Cir. 2006). An exception is carved out for substantial constitutional challenges and questions of law, which we do have jurisdiction to consider. *See* INA § 242(a)(2)(D), 8 U.S.C. § 1252(a)(2)(D) (providing that nothing in § 1252(a)(2)(B) precludes review of constitutional claims or questions of law raised in a petition for review).

Ismail was found to be inadmissible because "by fraud or willfully misrepresenting a material fact," he "sought to procure or ha[d] procured ... a visa, other documentation,

---

1. Ismail filed his waiver application after May 11, 2005, so his case is governed by the provisions of the REAL ID Act. *See Tang v. United States Att'y Gen.*, 578 F.3d 1270, 1277 (11th Cir. 2009).

or admission into the United States." INA § 212(a)(6)(C)(i), 8 U.S.C. § 1182(a) (6)(C)(i). When an alien is inadmissible on those grounds, the Attorney General has the authority to waive removability if certain requirements are met:

> The provisions of this paragraph relating to the removal of aliens within the United States on the ground that they were inadmissible at the time of admission as aliens described in section 1182(a)(6)(C)(i) of this title, whether willful or innocent, may, *in the discretion of the Attorney General*, be waived for any alien ... who—
>
> (i)(I) is the spouse, parent, son or daughter of a citizen of the United States or of an alien lawfully admitted to the United States for permanent residence; and
>
> (II) was in possession of an immigrant visa or equivalent document and was otherwise admissible to the United States at the time of such admission ....

INA § 237(a)(1)(H)(I)—(II), 8 U.S.C. § 1227(a)(1)(H)(i)(I)—(II) (emphasis added). The plain language of that statute provides that the decision about whether to waive removal is a discretionary one. *See id.*; *see also San Pedro v. Ashcroft*, 395 F.3d 1156, 1157 (9th Cir. 2005) ("Section 237(a)(1)(H) clearly specifies that the discretionary waiver determination lies in the hands of the Attorney General."). Because the decision to deny Ismail's waiver of removal under § 1227(a)(1)(H) was discretionary, we lack jurisdiction to review the BIA's decision.

Ismail also argues, however, that the IJ and the BIA failed to apply the appropriate balancing test when determining whether to grant a waiver. At first glance that appears to be a question of law, which we would have jurisdiction to consider. *See* INA § 242(a)(2)(D), 8 U.S.C. § 1252(a)(2)(D). On closer inspection, however, it is clear that Ismail actually challenges the balance struck in weighing the factors instead of the test that the BIA applied.

The BIA considered the positive factors in Ismail's case: his family ties in the United States, his 15-year residence here, and his ownership of successful businesses in this country. The BIA reasoned that, even though "these equities are important," Ismail's "repeated immigration fraud" showed "a serious and continuous disrespect for the laws of this nation." As a result, the BIA concluded that it was not in the best interests of the United States to grant Ismail a waiver of removability.[2]

---

2. The BIA applied this balancing test:

> The question whether to exercise discretion favorably necessitates a balancing of an alien's undesirability as a permanent resident with the social and humane considerations present to determine whether a grant of relief is in the best interests of this country. Adverse factors may include the nature and underlying circumstances of the fraud or misrepresentation involved; the nature, seriousness, and recency of any criminal record; and any other additional evidence of the alien's bad character or undesirability as a lawful permanent resident of the United States. Favorable considerations may include family ties in the United States; residence of a long duration in this country,

Ismail argues that the positive factors outweigh "the single negative component in this case" and that if "the IJ and BIA [had] employed the appropriate balancing test, they would have reached this conclusion" and would have granted the waiver. Br. of Petitioner at 16. The BIA applied the correct factors. It also reviewed the IJ's application of the balancing test and concluded that "the record reflects that the Immigration Judge applied the correct legal standard." The BIA's decision on that issue is the one that we review. *See Al Najjar v. Ashcroft*, 257 F.3d 1262, 1284 (11th Cir. 2001) (holding that when the BIA issues a decision, we review only that decision, except to the extent that the BIA expressly adopts the IJ's decision). Ismail has not identified any legal error in the BIA's decision and has raised no constitutional or legal issues that we have subject matter jurisdiction to review.

PETITION DISMISSED.[3]

> particularly where it commenced when the alien was young; evidence of hardship to the alien or her family if deportation occurs; a stable employment history; the existence of property or business ties; evidence of value and service to the community; and other evidence of the alien's good character.

In re Tijam, 22 I. & N. Dec. 408, 412-13. Ismail does not dispute that this test is the correct one; instead, he argues that the application of its factors "show[s] that a favorable grant of discretion was the only right outcome." Br. of Petitioner at 13.

3. The government's motion to dismiss is denied as MOOT.

APPENDIX B — DECISION OF THE BOARD OF IMMIGRATION APPEALS, U.S. DEPARTMENT OF JUSTICE, DATED OCTOBER 15, 2009

U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: A029 882 501 - Atlanta, GA Date: Oct 15 2009

In re: MOHAMMED SALIM ISMAIL,
a.k.a. Salim Hashwani

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Socheat Chea,
Esquire

ON BEHALF OF DHS: James R. McHenry III
Assistant Chief Counsel

CHARGE:

Notice: Sec. 237(a)(1)(A), I&N Act [8 U.S.C. § 1227(a)(1)(A)]-
Inadmissible at time of entry or adjustment of status under section 212(a)(6)(C)(i), I&N Act [8 U.S.C. § 1182(a)(6)(C)(i)] -
Fraud or willful misrepresentation of a material fact

Appendix B

APPLICATION: Waiver of deportability under section 237(a)(1)(H) of the Act

By an order dated November 5, 2007, an Immigration Judge denied the respondent's application for a waiver of deportability under section 237(a)(1)(H) of the Immigration and Nationality Act, 8 U.S.C. § 1227(a)(1)(H). The respondent has filed a timely appeal of that decision. The appeal will be dismissed.

This Board reviews the findings of fact, including the determination of credibility, made by the Immigration Judge under a "clearly erroneous" standard.[1] *See* 8 C.F.R. § 1003.1(d)(3)(i); *Matter of A-S-B-*, I&N Dec. 493 (BIA 2008). We review all other issues, such as whether the parties have met the relevant burden of proof and issues of discretion, under a *de novo* standard. *See* 8 C.F.R. § 1003.1(d)(3)(ii); *Matter of A-S-B-, supra; see also Matter of V-K-*, 24 I&N Dec. 500 (BIA 2008). In the present matter, the respondent filed his waiver application after May 11, 2005. Therefore, this case is governed by the provisions of the REAL ID Act. *See Matter of Almanza-Arenas*, 24 I&N Dec. 771, 774 (BIA 2009); *see also Matter of S-B-*. 24 I&N Dec. 42 (BIA 2006).

A waiver of deportability pursuant to section 237(a)(1)(H)(i)(1) of the Act requires that the respondent establish not only that he is statutorily eligible for relief, but also that he merits it in the exercise of discretion. In this case,

1. Inasmuch as there is no clear error in the Immigration Judge's findings of fact, we shall credit the testimony of the respondent and his wife on appeal. *See* section 240(c)(4)(C) of the Act, 8 U.S.C. § 1229c(c)(4)(C).

the respondent is statutorily eligible for the waiver. *See Matter of Guang Li Fu*, 23 I&N Dec. 985 (BIA 2006); *Matter of Tijam*, 22 I&N Dec. 408, 433 n.4 (BIA 1998) (noting that section 212(i) of the Act, 8 U.S.C. § 1182(i), is analogous to the waiver being considered here). *Cf. Matter of Cadiz*, 12 I&N Dec. 560 (BIA 1968). Thus, the pertinent issue here is whether the Immigration Judge properly denied the respondent's waiver request in the exercise of discretion.[2]

The question of discretion necessitates a balancing of an alien's undesirability as a permanent resident with the social and humane considerations present to determine whether a grant of relief is in the best interests of the United States. Adverse factors may include the nature and underlying circumstances of the fraud or misrepresentation involved; the nature, seriousness, and recency of any criminal record; and any other additional evidence of the alien's bad character or undesirability as a lawful permanent resident. Favorable considerations may include family ties to this nation; residence of a long duration in the United States, particularly where it commenced when the alien was young; evidence of hardship to the alien or his family if removability occurs; a stable employment history; the existence of property or business ties; evidence of value and service to the community; and other evidence of the alien's good character. *See Matter of Tijam, supra.*

---

2. To the extent that the respondent contends that the Immigration Judge demonstrated bias during the prior hearing, we disagree. To the contrary, the record reflects that the Immigration Judge applied the correct legal standard.

Appendix B

Among the positive factors presented here are the respondent's family ties, as well as his 15-year residence within the United States. *See* Tr. at 19, 21, 31, 36-37. The respondent is also the owner of multiple successful businesses. *See* Tr. at 20-21, 24-26, 28-31, 34-36; *sec also* Tr. at 51-53. Although these equities are important, their significance is tempered by other facts in the record. In particular, we are disturbed by the respondent's repeated immigration fraud. *See* Tr. at 13-19, 22-24, 26-27, 33, 37-42. The respondent has shown a serious and continuing disrespect for the laws of this nation. Consequently, we cannot conclude that it would be in the nation's best interest to grant the respondent the relief he seeks.

In view of the foregoing, the following order will be entered.

ORDER: The appeal is dismissed.

/s/_____
FOR THE BOARD

Appendix B

U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: A029 882 501 - Atlanta, GA Date: Oct 15 2009

In re: MOHAMMED SALIM ISMAIL,
a.k.a. Salim Hashwani

DISSENTING OPINION: Anne J. Greer, Board Member

I respectfully dissent. The controlling issue in this case is whether the respondent merits a discretionary waiver of deportability under section 237(a)(1)(H) of the Immigration and Nationality Act, 8 U.S.C. § 1227(a)(1)(H). *See Matter of Guang Li Fu*, 23 I&N Dec. 985 (BIA 2006); *Matter of Tijam*, 22 I&N Dec. 408, 433 n.4 (BIA 1998). There is no clear error in the Immigration Judge's findings of fact. 8 C.F.R. § 1003.1(d)(3)(i); *Matter of A-S-B-*, 24 I&N Dec. 493 (BIA 2008). In view of those factual findings, I conclude that the respondent merits the relief he seeks. *See Matter of Tijam, supra; see generally* 8 C.F.R. § 1003.1(d)(3)(ii); *Matter of A-S-B-, supra; Matter of V-K-*, 24 I&N Dec. 500 (BIA 2008) (stating that this Board reviews issues such as whether the parties have met the relevant burden of proof, and issues of discretion, under a *de novo* standard).

Appendix B

The record demonstrates that the respondent has a string of significant equities. For instance, the respondent has lived in this country for more than 15 years. *See* Tr. at 19. During that time he has purchased and operated multiple successful businesses, which has enabled him to make substantial contributions to the community. *See* Tr. at 20-21, 24-26,28-31, 34-36; *see also* Tr. at 51-53. The respondent also has substantial family ties to this country, including two United States citizen children. *See* Tr. at 19, 21, 31, 36-37. Both of the respondent's children have grown up in this country, and they may have difficulty adjusting to life in Pakistan. *See* Tr. at 34, 42-43, 47-50, 53. Balanced against these equities is the respondent's misconduct. While the significance of the respondent immigration fraud cannot be understated, there appear to be no other adverse factors in the matter. *See generally* Tr. at 13-19, 22-24, 26-27, 33, 37-42 (discussing the respondent's misconduct). Accordingly, I would sustain respondent's appeal.

/s/_____
Anne J. Greer
Board Member

APPENDIX C — ORAL DECISION OF THE U.S. DEPARTMENT OF JUSTICE EXECUTIVE OFFICE FOR IMMIGRATION REVIEW IMMIGRATION COURT DATED NOVEMBER 5, 2007

U.S. DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION
REVIEW IMMIGRATION COURT
ATLANTA, GEORGIA

File A 29 882 501 November 5, 2007

In the Matter of

JOHN DELL aka MOHAMMED SALIM ISMAIL aka SALIM HASHWANI aka JUMA BAI,

Respondent

IN REMOVAL PROCEEDINGS

CHARGE: 237 (a) (1) (A)

APPLICATION: 237 (a) (1) (H) waiver

ON BEHALF OF THE RESPONDENT:

Socheat Chea, Esquire

ON BEHALF OF THE DEPARTMENT OF HOMELAND SECURITY:

James McHenry, Esquire

Appendix C

ORAL DECISION OF THE IMMIGRATION JUDGE

The respondent is a male native and citizen of Pakistan who was issued a Notice to Appear on April 11, 2006. On November 8, 2006, an 1-261 which puts for additional factual allegations was filed. At a master calendar, respondent, through counsel, admitted the factual allegations and conceded removability. Subsequently, counsel also admitted the four additional factual allegations on the 1-261. Therefore, the Court would find that the removability has been established by clear and convincing evidence. The issue before the Court concerns respondent's application for relief from removal.

STATEMENT OF THE LAW

A provision to Section 237(a)(1) of the Act relating to the removal of an alien on the ground that he was inadmissible at the time of admission as an alien described in Section 212(a)(6)(C)(i) of the Act whether willful or innocent, may, in the discretion of the Attorney General be waived for any alien who meets the requirements under Section 237(a)(1)(H)(i) or (ii) of the Act. The Board of Immigration Appeals has recognized that Congress's intent in enacting INA Section 241(a)(1)(H) (now INA section 237(a)(1)(H) was to foster in perfect cases the unity of families composed in part of United States citizens or lawful permanent residents. *In re Tejam*, 22 I&N Dec. 408 (BIA 1998); *Matter of Aldecoaotalora*, 18 I&N Dec. 430 (BIA 1983).

Appendix C

An alien meets the requirements of Section 237(a)(1)(H)(i) of the Act if he is the spouse, parent, son or daughter of a citizen of the United States or of an alien lawfully admitted to the United States or permanent resident. INA Section 237(a)(1)(H)(i)(1). However, the alien must also been in possession of an immigrant visa or equivalent document and had been otherwise admissible at the time of such admission except the ground admissibility specified under INA Section 212(a)(5)(A) (not in possession of a labor certification) and (7)(A) (not in possession of a valid immigrant visa or other required documents) or that a visa was not issued in compliance with Section 203 of the Act which were a direct result or fact or admission of misrepresentation. INA Section 237(a)(1)(H)(i)(2).

A waiver of removability for fraud or misrepresentation granted under Section 237(a)(1)(H) operates the way deportation based on a ground of inadmissibility directly resulting from such fraud or misrepresentation. INA Section 237(a)(1)(H); *Matter of Acosta-Fernandez*, 20 I&N Dec. 758 (BIA 1993).

In order for an alien to demonstrate that he merits a waiver under Section 237(a)(1)(H), he must first establish that he is statutorily eligible for the waiver. *In re Tejam*, 22 I&N Dec. at 412. Once eligibility has been demonstrated, he must then show that he merits discretionary relief. In exercising his discretion under Section 237(a)(1)(H) of the Act, the Attorney General is not limited in the factors that he may consider in determining whether relief should be granted. *INS v. Uyueh Shaio Yang*, 519 U.S. 26 (1996); *In re Tejam*, 22 I&N Dec. at 416. The Board has held

that the Attorney General's decision "whether to exercise discretion favorably necessitates a balancing of an alien's undesirability as a permanent resident with social and humane considerations present." *Tejam*, 22 I&N Dec. at 412.

Adverse factors that may be considered include the nature of the underlying circumstances of the fraud or misrepresentation involved; the nature, seriousness and recency of any criminal record; and any other additional evidence of the alien's bad character or undesirability as a lawful permanent resident. *Id.* at 417. Favorable factors include family ties in the United States; residence of long duration particularly when it commences when the alien was at an extremely young age; evidence of hardship to the alien or his family if deportation occurs; a stable employment history; the existence of property or business ties; evidence of value and service to the community; and other evidence of the alien's good character.

Finally, false testimony given during the course of the hearing in which INA Section 237(a)(1)(H) relief sought is an extremely serious adverse factor. Moreover, BIA has held that the alien's initial fraud must be considered in determining whether to exercise discretion under 237(a)(1)(H) of the Act.

ANALYSIS

The first issue for the Court is to determine whether the respondent is even eligible for the 237(a)(1)(H) waiver. The Government argues, in essence, that the respondent

is ineligible as a 237(a)(1)(H) waiver is a waiver for an individual who is admitted as a lawful permanent resident, and the waiver does not apply in this case because the respondent entered as a non-immigrant. In support of such a position, the Government cited the Court to *Matter of Cadiz*, 12 I&N Dec. 560 (BIA 1968). Respondent then argues that *Matter of Lefu*, 23 I&N Dec. 985 operates as a waiver of all charges of inadmissibility where there is a misrepresentation made regardless of whether it was an immigrant or non-immigrant. *Matter of Cadiz* and *Lefu* appear to be somewhat contradictory. Although *Lefu* does not specifically overrule *Cadiz*, it does have language that the waiver will lay grounds of inadmissibility directly resulting from fraud or misrepresentation. Although it is a close question, in this case, the Court is going to find that the respondent meets the threshold eligibility for a 237(a)(1)(H) waiver. Having found statutory eligibility, it next becomes necessary to evaluate whether in the exercise of discretion the respondent should be granted the waiver.

The positive factors in this case indicate that the respondent does have immediate family ties in the United States consisting of a wife, two United States citizen children, a lawful permanent resident mother, and lawful permanent resident siblings. Respondent has been in the United States since 1993. However, he was an adult when he entered the United States. He does appear to have a stable employment history and has developed significant assets in this country. As far as evidence of hardship to the respondent and family if deportation occurs, the business ties would seem to cut both ways. It certainly could be argued that an individual with financial wherewithal

of the respondent would not suffer the hardship that a destitute individual would. Looking at the evidence submitted by the respondent, he is running a number of successful businesses and has a very nice home. Should his wife and family choose to depart with him, the financial wherewithal from these businesses and home would certainly be available to ease any transition.

The hardship of the voluntary relocation of the children is somewhat undercut by their young age. They speak the Urdu language. Although they do not read or write it particularly well, at the age of 6 and 10, it would certainly be expected that they could learn to read and write the Urdu language. The Court would not be surprised if the 6-year-old does not read and write the English language particularly well at this point in his life.

Balancing against the favorable factors are evidence of repeated fraud by the respondent in entering the United States. The evidence will show that the respondent has made three entries into the United States each of which was based on fraud. His testimony today indicates that he knowingly attempted to enter the United States by fraud on each of the three occasions. This is not the case of an innocent, naive individual not knowing what he was doing. He knowingly and with significant planning attempted to evade the immigration laws of this sovereign nation on repeated occasions.

Comparing his fraud to the sentencing guidelines/grid used in the United States District Courts of this country, this Court takes note of the fact that if an individual's

criminal activity requires substantial advanced planning, the seriousness of such crime is increased. By analogy, the Court today would find that given the advanced planning required for each of the fraud, that would increase the seriousness of the fraud. In March of 1989, he attempted to enter the United States with a photo substitute passport under an assumed name. He testified that prior to this attempted entry, he had applied for a visa in his own name and that was then denied. Rather than abiding by the laws of this nation, he chose to attempt by turpitude to obtain his ultimate goal, that is, entering, living and working in the United States. After his return to Pakistan in March of 1989, rather than attempting to abide by the laws of the United States again, with absolute (indiscernible) of the laws of the United States, he again proved planning, attempted to avoid the laws of the United States, and attempted entry in October of 1989 again with a fake passport and yet another name. This resulted in a formal order of exclusion from a Judge of the Immigration Court on October 27, 1989. Respondent was wholly removed on the 28th. Respondent was given the consequences of attempting to enter the United States illegally subsequent to his removal.

Respondent's fraud continued with his third entry into the United States on December 24, 1993. Respondent entered under a third name with a B-2 visa whieh he admitted he got by fraud. On the application for that visa, he did not disclose his prior attempt to enter the United States or the fact that he had been removed from the United States. The Court would note that as part of his plan of evasion of the laws of the United States, respondent

attempted to enter the United States at three different ports to further obfuscate is true intent. The first entry in March of 1989 was in New York. That did not work, so the second time he attempted to enter under a different name through Atlanta, Georgia. After that attempt failing, he attempted to enter in December of 1993 through Chicago, Illinois under yet another name. This attempt was successful. However, the fraud attempting to evade the immigration laws of the United States did not cease.

He applied for permanent residence in 1999. He did not disclose his immigration history. At the hearing today, he testified that he was placed under oath and was not truthful during the I-130(i)(45) interview. In 2003, he was again placed under oath by an immigration examiner in the context of a naturalization interview, and again, according to his testimony today, gave false testimony under oath to the immigration examiner. During that interview, he was specifically asked about some of the past names he attempted to enter the United States under at which time he denied he ever used these other names.

It was only at a subsequent interview several weeks later where he was again confronted with the vileness and baseness of his actions that he admitted his activities. When asked why he admitted it, he indicated that they already knew so he may as well go ahead and admit it. In balancing the fraud, the Court will find that the respondent is not entitled to a waiver of his repeated fraudulent activity. This is not a case where we're dealing with a one-time fraud or misrepresentation that the respondent voluntarily brought to the Government's attention. This is

a case where there are at least five separate instances of a knowingly intelligent with significant planning attempt to avoid and circumvent the immigration laws of the United States. It was only when he was faced with the fact that the Government knew of the prior fraud that he admitted his activity. In essence, the Court is faced today with a situation of someone who has violated the immigration laws of the United States on multiple occasions. Whenever it seems to be in his interest to violate the law, he would do so. Now he comes into Court because he's been caught and perceives that there is an element of the United States immigration law that might be in his favor and ask that the Court exercise its discretion in his favor. With such a sordid immigration history, this Court will not exercise a favorable grant in this case.

This does not mean that there are not multiple favorable acts as the respondent apparently is a good businessman and has produced a family in the United States. Careful examination of his tax returns does not show any obvious problems in that area. However, being a good businessman, a good father, a good husband does not outweigh at least five different deliberate planned frauds to violate the laws of the United States. A 237(a)(1)(H) waiver will be denied.

The only other possible relief available to the respondent is that of voluntary departure. However, in order to be eligible for voluntary departure at the close of the proceedings, an individual must establish that he is a person of good moral character. 101(f)(6) of the INA provides that anyone who has given false testimony under

oath for the purpose of obtaining a benefit under the Act is barred from being found to have good moral character. The respondent admittedly gave false testimony on multiple occasions to get benefits under the Immigration Act. The last occasion that was brought to the Court's attention was during a naturalization interview in 2003. That is within the time he appeared required to establish good moral character for the purpose of entitlement to voluntary departure. Therefore, the respondent will be statutorily barred from voluntary departure.

I would note further that the Court would deny voluntary departure in the exercise of discretion in this case even if the respondent were eligible. An individual who has gone to the extreme measures this individual has to violate the laws of the United States has not shown this Court that he would obey the laws of the United States if he were granted voluntary departure. There is nothing in his immigration history that would indicate that he would, in fact, depart the United States if required. An individual who was formally stopped and returned and told he had no right to enter the United States again perpetrated further fraud to enter the United States is not someone who would merit a favorable exercise of the Court's discretion and a grant of voluntary departure. The Court does not believe he would depart in accordance with such grant if granted.

Therefore based on a fair evaluation of the entire record, the following orders are entered.

IT IS ORDERED that the respondent's application for 237(a)(1)(H) waiver is denied.

Appendix C

IT IS FURTHER ORDERED that the respondent be removed from the United States to Pakistan on the charges contained in the Notice to Appear.

J. DAN PELLETIER
United States Immigration Judge

APPENDIX D — ORDER DENYING PETITION FOR PANEL REHEARING OF THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT, DATED DECEMBER 8, 2010

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 09-15720 -HH

Agency No. A029-882-501

MOHAMMED SALIM ISMAIL,

Petitioner,

versus

U.S. ATTORNEY GENERAL,

Respondent.

Petition for Review of a Decision of the Board of Immigration Appeals

BEFORE: TJOFLAT, CARNES and WILSON, Circuit Judges.

BY THE COURT:

Petitioner's "Petition for Panel Rehearing" construed as a motion for reconsideration of this Court's order of October 13, 2010, is DENIED.